LEG-1
(779)

STATE OF CALIFORNIA — Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: June 18, 2002

To: The Commission
(Meeting of June 27, 2002)

From: Bill Julian
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 80 (Havice)** – Aggregation: Magnolia Power Project

As Amended April 8, 2002

Recommendation: Oppose unless amended.

Related Bills: AB 117 (Migden)

Summary: This bill proposes (1) to lift the direct access suspension contained in ABX1 1, and to permit public agency participants in a specified new generation facility to "…serve as a community aggregator on behalf of all retail end-use customers within its jurisdiction;" (2) to create a special rule with respect to recovery of Department of Water Resources (DWR) and utility costs for the customers of the community aggregator, which would treat them in the same manner as a customer who entered into a direct access contract prior to the suspension of direct access.

Analysis: This bill uses the term "community aggregator" without defining it. Current law defines the term "aggregator" as "… any marketer, broker, public agency, city, county, or special district, that combines the loads of multiple end-use customers in facilitating the sale and purchase of electric energy, transmission, and other services on behalf of these customers." The bill appears therefore to establish public agencies that are participating in the Magnolia Power Project as energy service providers (ESPs) under current law, and to provide for the type of "opt-in" aggregation, coupled with substantive consumer safeguards including prior written consent and cooling-off period that has proved difficult to administer in the past.

The inducement for potential direct access customers is a special rule with regard to cost recovery for DWR and utility stranded cost. The Commission has not yet concluded its proceeding on cost recovery surcharge for existing direct access customers; applying a special rule that treats new direct access customers as if they had entered into direct access relationships

before signing DWR long-term contracts and incurrence of high DWR costs during Spring 2001 appears to be an inequitable cost shift to remaining IOU/DWR customers.

The use of the term "community aggregator" in AB 80 may be intended to incorporate the "opt-out" form of aggregation being advanced in AB 117. If that is the case, the bill is unnecessary, inasmuch as AB 117 would include the generation ownership scenario contemplated by AB 80. If AB 117 does not move forward, the opt-out aggregation concept would need to be placed in the bill, subject to all of the due diligence recommendations and cost recovery surcharge provisions recommended for AB 117.

If this bill is intended merely to provide a limited exception to the direct access suspension in ABX1 1, and otherwise to operate within the opt-in" paradigm of AB 1890. The cost recovery surcharge concept fully applicable to customers were bundled service customers of the utilities and DWR at all times during the energy crisis would need to be applied.

Suggested Amendments: AB 80 should be amended to fully conform to the provisions of AB 117, including amendments proposed for AB 117, if the "opt-out" aggregation approach is what is contemplated by the bill. If the bill is a limited exception for Magnolia Power Project city residents, operating within "opt-in" aggregation paradigm, the bill needs the comprehensive cost recovery surcharge language to avoid creating an inequitable cost shift.

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Date: June 19, 2002

BJ:mpg
Attachment

BILL LANGUAGE:

BILL NUMBER: AB 80 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 8, 2002
AMENDED IN ASSEMBLY MAY 31, 2001
AMENDED IN ASSEMBLY APRIL 30, 2001
AMENDED IN ASSEMBLY MARCH 27, 2001

INTRODUCED BY Assembly Member Havice
~~(Coauthors: Assembly Members Chavez, Diaz, Firebaugh, Negrete McLeod, Robert Pacheco, and Strom-Martin)~~

JANUARY 4, 2001

An act to add ~~Article 4.5 (commencing with Section 32246) to Chapter 2 of Part 19 of the Education Code, relating to school safety.~~ *Section 366.1 to the Public Utilities Code, relating to public utilities.*

LEGISLATIVE COUNSEL'S DIGEST

AB 80, as amended, Havice. ~~School safety: lead~~ *Aggregation: Magnolia Power Project* .

Existing law suspends the right of retail end-use customers to acquire direct access service from certain electricity suppliers after a period of time to be determined by the Public Utilities Commission until the Department of Water Resources no longer supplies electricity under a certain provision of law.

This bill would provide that, notwithstanding the above provision of law, a city with rights and obligations to the Magnolia Power Project, as defined, may serve as a community aggregator on behalf of all retail end-use customers within its jurisdiction. The bill would also prohibit customers receiving community aggregation service from a city with rights and obligations to the Magnolia Power Project from bearing any greater share of the Department of Water Resources revenue requirement than customers receiving service under an existing contract for direct access between a retail end-use customer and an electric service provider that was executed and effective after January 17, 2001, and on or before July 1, 2001. Because under the Public Utilities Act a violation of an order or decision of the commission is a crime, this bill would impose a

state-mandated local program by expanding the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Under the Lead-Safe Schools Protection Act, the State Department of Health Services is required to survey schools for the purpose of developing risk factors to predict lead contamination in public schools. Existing law requires the department to work with the State Department of Education to develop guidelines to ensure that lead hazards are minimized in the course of school repair and maintenance programs and abatement procedures.~~

~~This bill would, subject to funding being made available in the annual Budget Act, require a school district maintaining kindergarten or any of grades 1 to 12, inclusive, to require its district level maintenance supervisors to participate in training offered by the State Department of Health Services through its California Lead-Safe Schools Project after which the district level maintenance supervisors would be required to train certain school district maintenance employees in procedures and methods based on the training received through the California Lead-Safe Schools Project. These training program requirements would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains certain costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

~~SECTION 1. Article 4.5 (commencing with Section 32246)~~

SECTION 1. (a) It is the intent of the Legislature, in enacting the act adding this section, to recognize contributions made in response to California's need for the expedited investment in and development of new environmentally superior electrical generation projects.

(b) It is further the intent of the Legislature to avoid the potential delay in adding new electrical generating capacity that might be caused if certain project participants are not allowed to utilize community aggregation to deliver their share of the project output to customers within their jurisdiction.

SEC. 2. Section 366.1 is added to the Public Utilities Code, to read:

366.1. (a) As used in this section, the following terms have the following meanings:

(1) "Department" means the Department of Water Resources with respect to its power program described in Chapter 2 (commencing with Section 80100) of Division 27 of the Water Code.

(2) "Existing project participant" means a city with rights and obligations to the Magnolia Power Project under that certain Magnolia Power Project Planning Agreement, dated May 1, 2001.

(3) "Magnolia Power Project" means a proposed natural gas-fired electric generating facility to be located at an existing site in Burbank and for which an application for certification has been filed with the State Energy Resources Conservation and Development Act (Docket No. 00-SIT-1) and deemed data adequate pursuant to the expedited six-month licensing process established under Section 25550 of the Public Resources Code.

(4) "Existing direct access contract" means a contract for direct access between a retail end-use customer and an electric service provider that was executed and made effective after January 17, 2001, and on or before July 1, 2001.

(b) Notwithstanding Section 80110 of the Water Code or commission Decision 01-09-060, an existing project participant may serve as a community aggregator on behalf of all retail end-use customers within its jurisdiction.

(c) In determining cost responsibility for a share of the department's revenue requirement pursuant to Section 80110 of the Water Code, customers receiving community aggregation service from an existing project participant shall bear no greater share of the

department's costs than customers receiving service under an existing direct access contract.

SEC. 3. The Legislature finds and declares that, because of the unique circumstances applicable only to the Magnolia Power Project and a city with rights and obligations to the Magnolia Power Project under the Magnolia Power Project Planning Agreement dated May 1, 2001, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution. ~~is added to Chapter 2 of Part 19 of the Education Code, to read:~~

~~Article 4.5. Lead Safety~~

~~32246. (a) Each school district maintaining kindergarten or any of grades 1 to 12, inclusive, shall require its district level maintenance supervisors to participate in training offered by the State Department of Health Services through its California Lead-Safe Schools Project.~~

~~(b) After participating in training pursuant to subdivision (a), district level maintenance supervisors shall train school district maintenance employees whose worksites are facilities used as public elementary schools, public preschools, and public day care facilities in procedures and methods based on the training offered by the State Department of Health Services through its California Lead-Safe Schools Project.~~

~~(c) This section applies to school districts whose supervisors and employees have not received the training required pursuant to this section within the four years immediately preceding the effective date of this section.~~

~~(d) The requirements imposed by this section are only applicable if funding is specifically made available for that purpose in the annual Budget Act.~~

~~SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state in addition to the expenses otherwise~~

~~provided for by the state, as specified in Section 2 of this act, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.~~